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TO: Boards of Selectmen  
CC: Town Attorneys; Town Administrators  
FROM: Public Safety Commissioner Thomas G. Gatzunis and  
Occupational Safety Commissioner Laura M. Marlin  
DATE: December 27, 2007  
RE: TRENCH SAFETY REGULATION MODEL WARRANT ARTICLE

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On November 2, 2007, the Department of Public Safety and the Division of Occupational Safety promulgated regulations in accordance with chapter 82A of the General Laws relative to Excavation and Trench Safety. The regulations are codified at 520 CMR 14.00. This memo is intended to provide the Boards of Selectmen in communities throughout the Commonwealth with guidance relative to the implementation of required provisions of the new Excavation and Trench Safety regulations and, more specifically, the delegation of the required "permitting authority."

Pursuant to the statute and the regulations, municipalities are directed to designate an officer or board within the city or town as the local "permitting authority." The permitting authority is responsible for the issuance of required trench permits; the collection of optional permit fees; and the enforcement of the requirements for protections of the General Public that are included in the regulations. There are no explicit prerequisites or other required criteria for an individual or board to be designated as the permitting authority.

Moreover, there is no explicit mechanism for who shall make the designation or how the designation shall occur. The Attorney General's Office has suggested that a Town Meeting warrant article may be the most appropriate means of designation. In addition, towns may choose to adopt a by-law that does not conflict with the statute and regulations, but that may require more stringent regulations at the municipality's option.

The first step is the adoption of a Town Meeting warrant article. The Attorney General has suggested two options with regard to the language of the warrant article. In the first option, the town may choose to directly designate the permitting authority through the warrant article by a vote of Town Meeting. In this instance, Town Meeting will vote that a specific officer or board will become the town's permitting authority and, as such, issue the relevant permits and enforce the regulations, including ensuring the use of protections for the General Public. Sample language appears as follows:

***Sample Town Meeting Warrant Article 1: Direct Designation of the Permitting Authority***

*To see if the Town of X will, pursuant to MGL c. 82A, §2, vote to designate the Director of the Department of Public Works as the Town's officer to issue permits for the purpose of creating a trench as that term is defined by MGL c. 82A, §4 and 520 CMR 14.00?*

Alternatively, the town may vote to authorize a town board or officer (i.e. the Board of Selectmen) to then designate the permitting authority. In the second instance, Town Meeting will vote to authorize the Board of Selectmen, for example, to name the officer the Board believes is the most appropriate entity within the town to carry out the duties of the permitting authority:

***Sample Town Meeting Warrant Article 2: Delegation of Designation of the Permitting Authority***

*To see if the Town of X will, pursuant to MGL c. 82A, §2, vote to designate the Board of Selectmen as the means by which the Town shall designate the Board or Officer to issue permits for the purpose of creating a trench as that term is defined by MGL c. 82A, §4 and 520 CMR 14.00?*

As stated above, towns may also choose to pass a by-law that does not conflict with the regulations included at 520 CMR 14.00 but incorporates more stringent requirements that go beyond those required by the regulations. Examples of provisions appropriate for a by-law at the option of the town may include:

- *An inspection requirement.*
  - 520 CMR 14.00 does not require inspections of trenches unless the permitting authority is notified of a potential violation, in which case the permitting authority shall take action to respond to the notification. Municipalities may choose to pass a by-law requiring inspections prior to the start of work at a trench site. As an example, inspections may require the permit holder to show the permitting authority or attest to the protections for the General Public the permit holder intends use to secure the trench when it is unattended.
- *A police detail requirement.*
  - 520 CMR 14.00 provides that permit holders may either cover, barricade, backfill or attend a trench to provide protection to the General Public when the trench is unattended. Municipalities may choose to pass a by-law requiring attendance at an unattended trench by a police detail as the default protection in the event that the permitting authority is notified of an unattended trench during a time when the permit holder is unavailable, for example, after work hours. The by-law may provide that in the event a police detail is required for purposes of making the trench safe, the permit holder may be assessed the cost of providing the detail by the town.
- *A DPW action requirement*
  - As an alternative to hiring a police detail and assessing the cost to the permit holder, the municipality may choose to provide that in the event a trench is determined to be unsafe and unattended, the town's DPW shall take action to backfill, barricade, or cover the trench and the permit holder may be assessed the costs associated with the action, including overtime for DPW employees.
- *A blanket permit provision.*
  - Chapter 82A, §2 and 520 CMR 14.03(1) require a permit prior to the creation of a trench on public property or privately-owned land. The permitting process plays many roles in ensuring the public is adequately protected, including notifying the municipality of where in the community trenches are made. In fact, the law requires permit holders to "notify the local permitting authority of the exact location of the trench." For those entities that make several trenches over the course of a single project, such as a Department of Public Works, the permit requirement may be onerous. Accordingly, towns may choose to enact a by-law providing for a blanket permit that will allow entities working on large projects with multiple

trenches to add to the list of trench locations as the permit holder becomes aware that a trench is required. The benefits of the blanket permit include a reduction in redundant paperwork and increased efficiency. The blanket permit in no way absolves the permit holder from the information required by the regulations. The blanket permit provision may, however, help eliminate some hurdles to the efficient completion of work.

In summary, this memo is intended to provide information to towns contemplating the designation of the local permitting authority and the implementation of Excavation and Trench Safety regulations in accordance with MGL c. 82A, §2 and 520 CMR 14.03(1). While towns are unequivocally required to designate a local permitting authority, the manner in which they choose to do so is largely at the discretion of the individual town. Accordingly, the language of the sample Town Meeting warrant articles are suggestions. Additionally, the by-law examples above are not the only by-laws that the town may choose to adopt relative to the Excavation and Trench Safety regulations. Towns that wish to adopt more stringent requirements are free to do so, provided that the by-laws do not conflict with the statute, MGL c. 82A, or the regulations at 520 CMR 14.00.

For further information on the Excavation and Trench Safety regulations, including access to the full regulations and Frequently Asked Questions (FAQs) about the regulations, please visit the website or either the Department of Public Safety ([www.mass.gov/dps](http://www.mass.gov/dps)) or the Division of Occupational Safety ([www.mass.gov/dos](http://www.mass.gov/dos)).

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